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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 TERRENCE T. POWELL,

8 Petitioner,

v.

9 MARTHA KARR,

10 Respondent.

11 No. C10-5297 BHS/KLS

12 **REPORT AND RECOMMENDATION**
13 **Noted For: May 21, 2010**

14 This habeas corpus action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and MJR 4. Petitioner
16 filed this action under 28 U.S.C. § 2254 challenging his 2002 conviction for First Degree
17 Murder. Dkt. 1-2. The court's records reflect that this petition is successive. Accordingly, the
18 undersigned recommends that this file should be administratively closed and the case transferred
19 to the Ninth Circuit in accordance with Circuit Rule 22-3(a).

20 *DISCUSSION*

21 Ninth Circuit Rule 22-3 (a) states:

22 (a) Application. Any petitioner seeking leave to file a second or
23 successive 2254 petition or 2255 motion in district court must seek leave under 28
24 U.S.C. §§ 2244 or 2255. An original and five copies of the application Must be
25 filed with the Clerk of the Court of Appeals. No filing fee is required. If a second
26 or successive petition or motion, or application for leave to file such a petition or
 motion, is mistakenly submitted to the district court, the district court shall refer it
 to the court of appeals.

(Emphasis added).

1 Petitioner has previously filed a federal petition for habeas corpus relating to his 2002
2 conviction in Pierce County Superior Court Case No. 97-1-02259-4. See USDC No. C07-
3 5046RBL. That petition was denied on the merits and dismissed by the District Court on April
4 25, 2008. See Dkt. 32 (Order) and Dkt. 33 (Judgment) therein.

5 The petition before this Court is a "second or successive" petition and should be
6 transferred to the Ninth Circuit Court of Appeals consistent with the dictates of Rule 22-3 (a).
7

8 *CONCLUSION*

9 Accordingly, the Court should transfer this habeas corpus petition as a second or
10 successive petition and administratively close the file.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
12 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
13 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
14 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the
15 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
16 **May 21, 2010**, as noted in the caption.

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18 DATED this 29th day of April, 2010.

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21 Karen L. Strombom
United States Magistrate Judge
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